

# Recovering Monies from an Employee by Making Deductions from Pay (India)

by P Vivek Ilawat, Sayantani Saha, and Vikram Shroff, Nishith Desai Associates.

Status: **Law stated as at 01-Jan-2023** | Jurisdiction: **India**

This document is published by Practical Law and can be found at: [uk.practicallaw.tr.com/W-036-6436](https://uk.practicallaw.tr.com/W-036-6436)

Request a free trial and demonstration at: [uk.practicallaw.tr.com/about/freetrial](https://uk.practicallaw.tr.com/about/freetrial)

A Practice Note discussing when and how an employer can recover monies from an employee by making deductions from pay in India. This Note describes the regulations regarding deductions from pay, which deductions are prohibited and which are required, the different methods of making deductions, the limitations on deductions, and the tax considerations of making deductions.

Under certain circumstances, an employer can recover owed or outstanding payments from an employee by making deductions from payments of wages or salary over a period of time or on termination of employment. However, there are limitations on what deductions, and when deductions, can be made from an employee's wages or salary.

This Note covers what constitutes wages, deductions permitted by law, unlawful deductions, common instances when an employer may want to seek to recover monies owed by an employee, and the practical considerations and challenges when seeking to do so.

It does not cover in detail, deductions from pay required by law (such as income tax and social security) or those related to court-ordered garnishments, industrial action, disciplinary proceedings, or payments to third parties (such as payments to a pension, benefits provider, or trade union).

## Regulation of Deductions from an Employee's Pay

Payment of wages and permissible deductions from wages in India are primarily governed by:

- The [Payment of Wages Act, 1936](#) (PoWA).
- Relevant national and state-level rules.

The PoWA only allows employers to make certain kinds of deductions from an employee's wages and up to certain limits (see [Deductions Required or Authorised by Statute and Limitations on Recoveries and Deductions](#)). The PoWA has been extended to shops and commercial establishments (as defined in each state-specific Shops and Establishment Act) in certain Indian states such as:

- Karnataka (Bangalore).
- Haryana (Gurgaon).
- Tamil Nadu (Chennai).

There are also provisions relating to payment of wages and deductions under state-specific Shops and Establishments Acts in select states, such as Telangana and Uttar Pradesh.

India is in the process of codifying its labour laws into four separate labour codes. The Code on Wages, 2019 (Wages Code), once in effect, will repeal and replace the PoWA.

## Protected Employees

The PoWA applies to factories and certain "industrial or other establishments". Industrial or other establishments include:

- Mines.
- Plantations and quarries.
- Establishments notified by the appropriate state government.

(Section 2(ii), PoWA.)

The PoWA applies to employees employed in these working environments who earn a monthly wage (that is, wages before deductions) of up to INR24,000 (Section 1(6), PoWA).

States such as Haryana (Gurgaon) and Tamil Nadu (Chennai) have extended the PoWA to employees employed in shops and commercial establishments in the state, subject to specific conditions.

Some states such as Karnataka (Bangalore) have made the PoWA applicable to all employees covered under the state-specific Shops and Establishments Act.

The Wages Code, once in effect, will apply to employees of establishments where any industry, trade, business, manufacturing or occupation is carried out, including:

- Government establishments.
- Offices.
- Factories.

### Definition of Wages and Pay

#### PoWA

“Wages” are defined as all remuneration (by way of salary, allowances or otherwise) expressed in terms of money that would, if the terms of employment (express or implied) were fulfilled, be payable to an employee for work done in that employment (Section 2(vi), PoWA).

In addition to an employee’s monthly base remuneration payable under the terms of employment, wages include:

- Any remuneration payable under any award or settlement between the parties or order of a court.
- Any remuneration to which the employee is entitled for overtime work or holidays or any leave period.
- Any additional remuneration payable under the terms of employment (whether called a bonus or another name).
- Any sum that, due to the termination of the employee’s employment, is payable under any law, contract or instrument that provides for the payment of that sum, whether with or without deductions, but does not provide for the time within which the payment is to be made.
- Any sum to which the employee is entitled under any scheme framed under any law for the time being in force.

Wages do not include:

- Any bonus (whether under a scheme of profit sharing or otherwise) which:
  - does not form part of the remuneration payable under the terms of employment; or
  - is not payable under any award or settlement between the parties or order of a court.
- The value of:
  - any accommodation;
  - the supply of light, water, medical care or other amenity; or
  - any service excluded from the computation of wages by a general or special order of the appropriate government.

- Any contribution paid by the employer to any pension or provident fund, and any interest which may have accrued.
- Any travelling allowance or the value of any travelling concession.
- Any sum paid to the employee to cover or reimburse special expenses incurred and required by them by the nature of their employment.
- Any gratuity payable on the termination of employment, except where any law, contract or agreement provides for that payment (with or without deductions) but does not provide for the time within which the payment is to be made.

(Section 2(vi), PoWA.)

Many state-specific Shops and Establishments Acts have adopted the PoWA’s definition of wages.

#### Wages Code

Once in effect, Section 2(y) of the Wages Code will define wages as all remuneration (by way of salaries, allowances or otherwise), expressed in terms of money which would, if the terms of employment (express or implied), were fulfilled, be payable to an employee for work done in that employment, and will include:

- Basic pay.
- Dearness allowance (paid to offset the impact of inflation).
- Retaining allowance, if any.

Wages under the Wages Code will not include:

- Any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment.
- The value of:
  - any accommodation;
  - the supply of light, water, medical care or other amenity; or
  - any service excluded from the computation of wages by a general or special order of the appropriate state government.
- Any contribution paid by the employer to any pension or provident fund, and any interest which may have accrued.
- Any travel allowance or the value of any travelling concession.
- Any sum paid to the employee to cover or reimburse special expenses incurred and required by them by the nature of their employment.

- House rent allowance.
- Remuneration payable under any award or settlement between the parties or order of a court or tribunal.
- Any overtime allowance.
- Any commission payable to the employee.
- Any gratuity payable on the termination of employment (see [Practice Note, Individual Employee Termination \(India\): Termination Payments](#)).
- Any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to them on the termination of employment (see [Practice Note, Individual Employee Termination \(India\): Retrenchment and Termination Payments](#)).

However, if the payments excluded from wages exceed 0.5% (or another percentage decided by the Central Government) of all the remuneration calculated and considered as wages, the amount that exceeds 0.5% (or the percentage so notified) will be considered wages.

When evaluating equal wages for all genders, emoluments relating to any of the following must be considered:

- Travel allowances and travelling concessions.
- House rent allowance.
- Remuneration payable under any award or settlement.
- Overtime allowance.

Where an employee is given remuneration in kind by their employer in place of all or part of their wages, the value of that remuneration in kind, will be part of the employee's wages to the extent it does not exceed 15% of the total wages payable to the employee.

(Section 2(y), Code on Wages, 2019.)

### Definition of Deduction

Although there are provisions in the PoWA, and some state-specific Shops and Establishments Acts, on permissible deductions from an employee's wages, there is no specific definition of "deduction" in the law. The PoWA also uses the term "recovery" from wages in certain sections.

Similarly, the Wages Code has provisions on permissible deductions from an employee's wages, but no specific definition of "deduction".

### Prohibited and Unlawful Deductions

The PoWA prohibits any deductions from wages from protected employees (see Protected Employees) which

are not otherwise permitted by the law. Employers can make certain deductions from an employee's wages subject to applicable state rules (Section 7(2), PoWA).

There are similar prohibitions under state-specific Shops and Establishments Acts in states such as Telangana and Uttar Pradesh.

### Deductions Required or Authorised by Statute

#### Social Security

Under certain social security statutes (such as the [Employees' Provident Funds and Miscellaneous Provisions Act, 1952](#) and the [Employees' State Insurance Act, 1948](#) (ESIA)), employers must deduct specific social security contributions from employees' wages and remit such amounts to the relevant statutory authorities (such as the Employees' Provident Fund Organisation (EPFO) (or private provident funds for exempted establishments) and the Employees' State Insurance Corporation (ESIC)).

#### Income Tax

State-specific laws such as professional tax statutes and labour welfare fund statutes have similar requirements for employers to deduct from employees' wages.

The [Income Tax Act, 1961](#) (Income Tax Act) requires employers to deduct tax (that is, tax deducted at source) from an employee's gross income, based on applicable tax rates (Section 192, Income Tax Act).

#### PoWA

Employers cannot make any deductions from an employee's wages except as permitted by law (see Prohibited and Unlawful Deductions).

Under the PoWA, employers can make deductions from a protected employee's wages for the following reasons:

- For fines.
- For absence from duty.
- For damages to or loss of goods entrusted to the employee (such as an employer credit card).
- For amenities supplied by the employer (such as canteen facilities).
- For recovery of advances (such as a salary advance).
- For recovery of housing loans.
- For income-tax deductions from salary.
- Owing to a court order.
- Agreed for contribution to certain prescribed or government approved funds and schemes, trade

## Recovering Monies from an Employee by Making Deductions from Pay (India)

union membership fees payable by the employee or insurance schemes framed by the central government for the benefit of their employees.

- For payable premiums on fidelity guarantee bonds.

(Section 7(2), PoWA.)

There are similar provisions under state-specific Shops and Establishments Acts (and applicable rules) in states such as Telangana, Uttar Pradesh and the National Capital Territory of Delhi. The Wages Code will also permit similar deductions from an employee's wages once effective.

When penalties are imposed in compliance with the applicable legal requirements and the employer's policy (for example, as a disciplinary sanction, resulting from a lawful finding of misconduct of the employee), the following are not considered deductions from wages under the PoWA:

- Withholding of salary increments or promotions including stopping increments.
- Reduction to a lower post or time scale or a lower stage in a time scale, including:
  - demotion to a lower ranked role; and
  - demotion to a post with discounted experience, where an employer's policy provides for experience-based promotions.
- Suspension of an employee.

(Section 7(1), PoWA.)

### Sexual Harassment

Under the [Sexual Harassment of Women at Workplace \(Prevention, Prohibition and Redressal\) Act, 2013](#) an internal committee may be appointed by an employer to investigate complaints of sexual harassment against women. Where an employee is found guilty of sexual harassment, the committee can recommend the deduction of an appropriate sum from the employee's wages. This is paid as compensation to the aggrieved woman.

## Recovering Monies from an Employee

The following examples cover instances where an employer may want to recover money from an employee by making a deduction from their wages. Those deductions can only be made if permitted by law and there are limitations on the sums that can be recovered (see [Deductions Required or Authorised by Statute and Limitations on Recoveries and Deductions](#)).

Concerning the statutory position on permitted deductions from wages, an employer must always

consider both the PoWA and state-specific Shops and Establishments Acts and any applicable rules.

In India, the law is silent about what potential deductions (including any applicable obligations or requirements relating to the deduction), must be expressly stated in the employment agreement. Further, save for some limited written format requirements in some states, executing employment agreements in India is optional.

The [Occupational Safety Health and Welfare Code, 2020](#) will make it mandatory for all employers to issue an appointment letter to all employees in a prescribed manner.

However, irrespective of the above, employers often have provisions in their employment contracts and policies acknowledged by employees which specify that the employer can deduct certain amounts from the employee's payroll under certain conditions. For example, where an employee opts in for a service provided by the employer or employees wish to buy the employer's stock options. Many employers also include the following in an employee's employment contract:

- Notice-pay recovery clauses.
- Clauses on recovery of sign-on bonus.
- Training costs.

The following examples state where any such contractual provision is recommended or common, and when other considerations or requirements may apply.

### Overpayments

Deductions from an employee's wages for the adjustment of overpayment of wages (with accrued interest) are permitted (Section 7(2)(f), PoWA). There are similar provisions under state-specific Shops and Establishments Acts in states such as Telangana and Uttar Pradesh.

However, there are certain compliance requirements under the state rules to the PoWA and state-specific Shops and Establishments Acts which an employer must comply with before making deductions from an employee's pay. For example, in context of overpayments (which is likely to be treated as an advance of wages under the PoWA) Karnataka state rules to the PoWA permit recovery of salary advances by deductions from wages in installments, which may be spread over a maximum of 12 months, with no installment exceeding one-quarter of an employee's wages.

Complying with the state-specific rules and obligations may be impracticable for an employer every time a salary deduction to recover an overpayment (or for another reason) is proposed. Therefore, it is recommended that the employer notifies the employee and obtains

the employee's written consent before deducting any amount from the employee's salary.

Where an employee disputes a salary deduction being made without consent, they may file a complaint with the labour authorities, leading to litigation. An overarching consent clause is also usually included in the employment contract.

### Advance Payments

An advance payment occurs where an employer makes an early payment of wages to an employee before the date that the payment would otherwise be due.

Advance payments can be recovered (Section 7(2)(f), PoWA). However, certain compliance requirements under state-specific PoWA rules and applicable Shops and Establishments Acts apply for the recovery of advance payments by salary deductions.

For example, under the Punjab Payment of Wages Rules 1937 (applicable to commercial establishments in Haryana (Gurgaon)), an advance of wages can be recovered in instalments spread over a maximum of 12 months, with no installments exceeding one-third of an employee's wages. In some states the limit is one-quarter of the wages, with the amount of advances sanctioned and repayments recorded in a prescribed format. There is a similar requirement for recovery of advances under the Karnataka Payment of Wages Rules 1963.

To reduce the risk of an employee bringing litigation about a deduction for an advance payment or otherwise, an employer should:

- Obtain prior written consent from the employee.
- Inform the employee of the proposed deductions beforehand.

### Failure to Repay a Loan

An employer can deduct monies from an employee for the recovery of loans granted for building houses or other purposes approved by the appropriate state government, along with applicable interest (Section 2(ff), PoWA). In India, offering loans for building houses is not common across industries. However, it is usual for establishments such as banks to provide loans to its employees where doing so is part of its normal operations.

Although it is not a legal requirement or obligation, parties typically execute a loan agreement with additional terms and conditions that authorise the employer to deduct the loan repayments in instalments from the employee's monthly salary.

For permitted limits on what can be recovered from an employee's salary, in *The Manager, Rajapalayam Mills v.*

*Labour Court, Madurai (1987 ILLJ 59 Mad)*, the Madras High Court allowed an employer to deduct contractual dues of an outstanding loan from an employee's full and final payment, over the 50% limit provided under the PoWA.

### Sign-on Bonuses and Training and Relocation Costs

The right of an employer to recover sign-on bonuses, training costs, or relocation costs (such as work-permit or visa costs), from an employee's wages remains largely untested before Indian courts. The position on these types of costs or payments is typically contractually agreed at the start of an employee's employment, in the employment contract.

The PoWA is silent on the recovery of sign-on bonuses, training costs, or relocation costs from employees who are contractually required to repay those amounts to their employers. Employers typically include that obligation in the concerned employee's employment contract as a deterrent.

Employers may contractually structure the sign-on bonus as an advance to the employee, which is earned by the employee on complying with certain conditions such as completing a certain length of service, barring which it becomes recoverable by the employer (see Advance Payments). This approach is largely untested. If the employee refuses to repay the sign-on bonus amount, the employer may issue a demand notice as a deterrent to the employee trying to evade their contractual obligation of repayment.

Employers may include terms in employment contracts for recovery of training costs and relocation costs incurred by the employer from employees who do not comply with certain requirements (such as not completing a certain period of service with the employer). Indian courts have typically enforced training-cost recovery clauses where the costs are reasonable considering the actual costs incurred by employers in training the employees. Irrespective of those clauses, employers should ensure that they can prove the validity of the training costs sought to be recovered from the employee.

Indian laws do not provide an automatic legal right to deduct the recoverable amount for sign-on bonuses, or training and relocation costs from an employee's wages. Therefore, an employer may prefer to notify the employee about the owed amounts, requiring the employee to repay it by direct transfer to the employer. An employee may prefer this option to the employer taking legal action against them for the recovery of contractual dues. Litigation in India is time consuming

and expensive, and involves reputational risk for the employee.

### Annual Leave Taken in Excess of Entitlement

The PoWA does not provide for deductions from an employee's wages at the end of the holiday year or on termination of employment where the employee has taken more annual leave than they have accrued. However, the PoWA allows employers to make deductions from an employee's wages for absence from duty (that is, any absence without leave) on a pro-rata basis, subject to applicable state rules to the PoWA and Shops and Establishments Acts.

The concept of unpaid leave is not recognised in Indian law. However, the concept of "no-work no-pay" has been recognised by Indian courts in several cases (such as *Bank of India v. T. S. Kelawala, 1990 (4) SCC 744*). Employers may rely on this principle to make deductions from an employee's salary where the employee voluntarily absents themselves from work without leave.

Consistent with global practice and as per applicable laws, employees in India are typically entitled to a certain number of paid leaves annually which are accrued in the course of their employment and can be availed with the employer's approval. If an employee remains absent from work without the employer's prior approval (or subsequent ratification), in practice some employers treat such unapproved absence as an absence with loss of pay.

### Recovering the Value of (or Physical) Company Property

Deductions from wages are allowed for damage or loss of goods entrusted to an employee or for loss of money for which an employee must account, where that damage is directly attributable to the employee's neglect or default (Section 7(2)(c), PoWA). There are similar provisions under state-specific Shops and Establishments Acts in states such as Telangana and Uttar Pradesh.

There are certain compliance requirements under state specific PoWA rules and applicable Shops and Establishments Acts, which may include a requirement to:

- Explain the damage or loss in relation to the proposed deduction to the employee's wages.
- Offer the employee an opportunity to provide an explanation.

The charge for damages and the employee's explanation, must be in writing and signed by the employee. There are

additional requirements under state specific PoWA rules on maintaining records of deductions for damages in a prescribed format.

### Importance of Consistent Treatment of All Employees

There is no legal requirement under the PoWA or state-specific Shops and Establishments Acts for employers to take a uniform approach for all cases of deductions from employee wages.

Amounts owed by employees may be recovered in various ways, including repayment of those amounts by employees, without making deductions.

Employers may prefer to have a uniform policy towards deducting any amount from employee salaries to:

- Optimise recovery.
- Avoid potential discrimination claims.
- Ensure procedural consistency.

### Limitations on Recoveries and Deductions

#### Maximum Permitted Deduction

Section 7(2) of the PoWA sets out which deductions are permitted and Section 7(3) of the PoWA sets limits on the amount of deductions that can be made under the PoWA. The PoWA prohibits deductions in excess of over 50% of an employee's wages (that is, wages before any deductions are made) for any wage period, except for deductions for payments to co-operative societies (registered as such under national and state laws relating to co-operative societies, for example, the *Multi-State Co-operative Societies Act, 2002*) approved by the state government, for which the limit is extendable up to 75% of an employee's wages (before any deductions are made) for any wage period (Section 7(3), PoWA).

However, section 7(4) of the PoWA permits employers to recover any amount payable by an employee under any other applicable law from their wages, and those recoveries are not subject to the limitations of Section 7(3) of the PoWA.

Employers are prohibited from entering into employment contracts contrary to the provisions of the PoWA (Section 23, PoWA). Further, in general, employers and employees cannot enter into contracts providing for obligations that are not permitted or are contrary to the provisions under applicable laws, such as applicable Shops and Establishments laws (*Bank of India v. T.S. Kelawala (1988) ILLJ 264 Bom*).

## Recovering Monies from an Employee by Making Deductions from Pay (India)

In post-employment scenarios, some courts have upheld an employer's right to recover monies in full from an employee as contractual debts. In *The Manager, Rajapalayam Mills v. Labour Court, Madurai (1987 ILLJ 59 Mad)*, the Madras High Court held that as Section 7(4) of the PoWA allows deductions from an employee's salary under any law in force, if the employer is entitled to recover certain amounts from the employee as a creditor under the Contract Act 1872, the employer should be able to deduct over 50% of an employee's wages (before any deductions are made) for any wage period to recover those amounts. This applied especially where the employment relationship had ended and a contractual relationship of debtor and creditor continued between the parties.

### Minimum Wage

There are laws providing for the payment of minimum wages to employees in certain types of employment. The Minimum Wages Act, 1948, sets out the relevant types of employment. These include employment in certain kinds of factories and mines and employment in agriculture.

States may also notify minimum wages for certain categories of employees within their jurisdiction. For example, the state of Karnataka (Bangalore) specifies minimum wages payable to employees of shops and commercial establishments in the state.

However, there is no particular requirement for an employee to receive a minimum net or gross payment after any applicable deductions from their salary.

### Statutory Sick Pay

There is a limited concept of sickness benefit under the ESIA which is not paid by the employer directly, and therefore, not subject to any deductions.

If an employer offers contractual enhanced sick pay, this would be treated as wages and be subject to the rules prescribed in the PoWA.

### Statutory Maternity Pay and Other Statutory Family-Related Payments

In India, the [Maternity Benefit Act, 1961](#) (MBA) provides for paid maternity leave for female employees. There is a limited concept of payment of a medical bonus under the MBA for female employees, to cover the costs of pre-natal confinement and post-natal care, unless otherwise covered by the employer.

The definition of wages under the PoWA does not cover this medical bonus. However, employers are advised to pay the full amount of medical bonus

to eligible female employees to avoid any non-compliance risk under the MBA.

### Statutory Redundancy or Severance Pay

Retrenchment compensation is payable on termination of employment for reasons unrelated to the misconduct of the employee. For example, redundancy or poor performance. It is not payable when the employment terminates for resignation, misconduct, expiry of fixed-term contracts and voluntary retirement (for more detail, see [Practice Note, Individual Employee Termination \(India\): Retrenchment](#)).

It is calculated at a specified rate is payable to "workmen" (which excludes employees engaged in managerial or administrative positions, and supervisors earning monthly wages exceeding INR10,000 per month) (Section 25(c), [Industrial Disputes Act, 1947](#)).

Retrenchment compensation is not considered as wages under the PoWA or the Wages Code.

To avoid a claim of illegal retrenchment in view of non-payment of full retrenchment compensation, it is recommended that employers do not make any deductions from an employee's retrenchment compensation.

### Sums to Be Recovered Exceed Employee's Wage or Final Payments

Where the sums to be recovered from an employee exceed the permissible limit on deductions under law (50% or 75% as applicable under the PoWA) (see [Maximum Permitted Deduction](#)), employers can consider:

- Issuing a demand notice to the employee to separately repay the outstanding dues. Typically, this is a notice issued to the employee setting out the details of the outstanding payment and the amount to be recovered, offering the employee any reduction on the sum owed or any proposed payment plan, such as payment in installments (if applicable). It reserves the employer's rights to take legal action against the employee if the employee does not repay the outstanding amount within a stipulated timeline.
- Initiating legal action for recovery.

### Tax Considerations

- Where employers are recovering any sums owed by an employee, any tax withholdings on the recoverable sum need to be assessed based on the nature of recovery on a case-by-case basis.

## Recovering Monies from an Employee by Making Deductions from Pay (India)

- For example, where the employer is recovering an amount paid on behalf of the employee to obtain certain services for the employee (such as subsidised day-care services), the employer will typically recover the pre-tax cost of these services from the employee. That is, the amount including any tax to be paid by the employee for obtaining those services.
- Communications to tax authorities in this context will depend on the nature of recoveries being made by the employer.

### Employee Remedies and Consequences for Employer

#### Unlawful Deductions and Underpayment of Wages

Claims against unlawful deductions can be filed before the appropriate authority empowered under the PoWA (this differs from state to state). Similar claims can be raised before appropriate fora under the state-specific Shops and Establishments Acts which prohibit unlawful deductions.

Claims under the PoWA can be filed within 12 months from the date of the asserted unlawful deduction. There is no specific prohibition on the linking of a series of asserted unlawful deductions. Adjudicating authorities under the PoWA can admit a claim after the expiry of 12 months from the date of deduction, where there is sufficient cause for the delay. This is determined on a case-by-case basis and requires the adjudicating authority to be satisfied there were satisfactory reasons for the delay.

#### Employer Recovery Permitted by Law but Disputed by Employee

An employee can claim that a deduction from their wages was not in accordance with due procedure, or was in excess of the permitted limits. For example, in the state of Karnataka, an employer cannot recover advance payments in installments exceeding one-quarter of the employee's monthly wages. The employee may challenge any deduction beyond the permitted limits.

There have been instances where employees have challenged an employer's ability to make deductions for absence from duty owing to the employee's inability to

attend work due to involuntary circumstances (*Kothari (Madras) Ltd. v. Second A.J cum Appellate Authorities and Others (1991) II L.L.J. 604* (Andhra Pradesh)).

The approach taken by an employee to challenge the legality of a deduction may vary based on the nature of the deduction. For example, deductions for the recovery of a sign-on bonus may be challenged on the grounds that the deduction is not specifically permitted by law.

### Tips for Employers

An employer should consider the following points before seeking to recover monies from an employee by making a deduction from their salary:

- Evaluate the status of the proposed deduction, for example, whether it is permitted at law or expressly prohibited.
- It is not legally permissible for an employer to contract beyond what is permitted by law.
- Before making any deduction from wages, an employer should notify the employee and ensure that they specifically consent to the employer's ability to make appropriate deductions from wages (see *Recovering Monies from an Employee*).
- For contractual payments, an employer should check if recovery of these can be documented as permitted deductions to the extent applicable. For example, documenting a sign-on bonus as an advance payment (see *Sign-on Bonuses and Training and Relocation Costs*).
- Payment related policies such as annual commission policies, or any provision relating to a bonus that is not part of an employee's remuneration under the PoWA (such as a discretionary bonus), should contain specific provisions permitting employers to make deductions of recoverable amounts from the payable amounts.
- Before making deductions from an employee's full and final payment, the employer should try to recover those amounts from the employee through a payment plan (that is, a repayment plan that ends before the termination of employment). Deductions from an employee's full and final payment should be considered a last resort, and it is recommended not to make any deductions from a retrenchment payment (see *Statutory Redundancy or Severance Pay*).

#### Legal solutions from Thomson Reuters

Thomson Reuters is the world's leading source of news and information for professional markets. Our customers rely on us to deliver the intelligence, technology and expertise they need to find trusted answers. The business has operated in more than 100 countries for more than 100 years. For more information, visit [www.thomsonreuters.com](http://www.thomsonreuters.com)